ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	
	)	
Amendment of Part 90 of the Commission's Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144
	)	
Amendment of Parts 2 and 90 of the Commission's Rules To Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Allotted to the Specialized Mobile Radio Pool	)	PR Docket No. 89-553

McCAW CELLULAR COMMUNICATIONS, INC.
PETITION FOR RECONSIDERATION

Cathleen A. Massey
Senior Regulatory Counsel
McCaw Cellular Communications, Inc.
1150 Connecticut Ave., N.W.
4th Floor
Washington, D.C. 20032
(202) 223-9222

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McCAW CELLULAR COMMUNICATIONS, INC.
PETITION FOR RECONSIDERATION

McCaw Cellular Communications, Inc. ("McCaw"),[1] on behalf of its cellular and messaging affiliates and Claircom Communications Group, L.P. ("Claircom"), its commercial air-ground affiliate, hereby petitions the Commission for reconsideration of the Third Report and Order in the above-captioned docket.[2] By the *CMRS Third Report and Order*, the Commission has sought to reconcile the Part 22 and Part 90 rules applicable to commercial mobile radio services ("CMRS") in order to establish

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[1] McCaw is a wholly-owned subsidiary of AT&T Corp.

[2] FCC 94-212 (Sept. 23, 1994) ("*CMRS Third Report and Order*"), Erratum, (Nov. 30, 1994). A summary of the Commission's action was published at 59 Fed. Reg. 59945 (Nov. 21, 1994).

regulatory parity among similar mobile services. The *CMRS Third Report and Order* represents, in the Commission's view, "an important step in [the] continuing effort to enhance competition among mobile services providers, promote the development of new and technologically innovative service offerings, and ensure that consumer demand, not regulatory decree, dictates the course of the mobile services marketplace."[3]

I. SUMMARY

McCaw concurs that the *CMRS Third Report and Order* represents a largely successful effort to implement regulatory parity in the mobile services industry, as required by Congress.[4] In several respects, however, action taken in the *CMRS Third Report and Order* should be reconsidered in order more effectively to achieve the Commission's goals as enumerated above. Initially, the Form 600 should be modified in several respects:

- Item C21 should be deleted;
- Item C20 should be modified to seek information on average distance to the service area boundary;
- Schedule C should be expanded to include additional information about antennas and transmitters;

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[3] *Id.*, ¶ 1.

[4] *See* Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 (1993).

- Item A3 should be corrected to reference, for air-ground applicants, the specific channel block (and not specific channels); and
- The instructions for Schedule F should be aligned with the actual item numbers on the schedule.

Similarly, recently adopted Section 22.929(b), which purports to list information required by Schedule C, should be conformed with the actual information items listed on the schedule.

Beyond the form issues, McCaw believes that the Commission should retain its first-come, first-served processing procedure for cellular Phase II unserved area applications. The *CMRS Third Report and Order* unfairly discounts both the Commission's own rationale for adopting that procedure and the likely adverse effects of the new 30-day notice and cut-off policy.

Despite seeking parity in the regulatory structures applied to competing services regulated under different parts of the Commission's Rules, the *CMRS Third Report and Order* nonetheless declines to conform the maximum transmitter power rules for cellular, enhanced specialized mobile radio ("ESMR"), and personal communications services ("PCS"). McCaw recognizes that spectrum reuse demands dictate operation at much lower power levels than the maximum levels specified in these services. Nonetheless, cellular licensees face constraints on their system design that are more extreme than those imposed on ESMR and PCS operators. This lack of parity must be removed.

Finally, the Commission should exempt air-ground radiotelephone service licensees from the station identification requirements. Imposition of this new requirement is both technically inefficient and prohibitively expensive, and cannot be justified.

The specific changes sought by McCaw are discussed below. McCaw also urges the Commission as it addresses these and other elements of the regulatory structure for commercial mobile radio services ("CMRS") to be guided throughout by the Commission's statement of goals set forth above.

II. THE FORM 600 SHOULD BE REVISED IN CERTAIN RESPECTS AND THE COMMISSION SHOULD CONFORM THE FILING REQUIREMENTS SET OUT IN ITS RULES WITH THOSE CONTAINED IN THE FORM 600

A. The Form 600 Should Be Modified in Certain Respects

The Form 600 should be revised in several respects:

First, on Schedule C, the Commission should delete item C21, which requires an applicant to provide the distance to the cellular geographic service area ("CGSA") along each of the radials associated with an antenna. This is new information that has not previously been collected by the Commission, and does not appear to be needed in the context of processing a Form 600 or other form to which the Exhibit C may be attached. At the same time, calculation of this data could be very burdensome for applicants, in part because it will require technical staff to make a legal determination

concerning the location of the CGSA boundary. Moreover, the CGSA boundary may periodically change as the market matures and as adjacent markets reach their respective five year build-out dates.[5] The relevant information, and that which can consistently and accurately be calculated by an applicant, is that required in item C20 - Distance to SAB [service area boundary]. Accordingly, the Commission should delete item C21 from the Form 600.

Second, in Exhibit C, the Commission should add a box at the end of the column under item C20 requesting "Average Distance to SAB." This information is necessary to determine maximum ERP. If the applicant does not supply this information, the Commission staff will have to calculate the average for each application in order to assess whether the maximum ERP limits have been met. Adding this information requirement to the form should help shorten Commission processing times and relieve the burden associated with the processing of each application.

Third, the Commission should revise Schedule C to require the following technical information for antennas and transmitters, similar to the information requested in Schedule B of the current Form 401: the type and make of antenna, the maximum antenna gain and direction of that gain, the beamwidth of the main lobe, polarization,

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[5] Indeed, this information could change a number of times while an application is pending with the Commission. Under Section 1.65 of the Commission's Rules, 47 C.F.R. § 1.65 (1993), the data contained in the application under item C21 would have to be updated -- despite the fact that this information appears to serve no useful purpose in the processing of the application.

and the emission type designator. This technical information should be provided on Schedule C so that the Commission and licensees can determine any potential interference from the information in the FCC's database. This data is necessary as well for cellular carriers to recreate, without exclusive reliance on the map filed by another operator, the service area boundaries of such adjacent operator carriers, whose operations may will affect the original carrier's facilities.

Fourth, Claircom requests that the Commission modify the Form 600 to clarify certain items as they pertain to air-ground licensees. As an initial matter, the Commission should amend the instructions to Schedule A, item A3, which address the "channel block" designation. These instructions erroneously refer to the channels to be employed within the particular channel block designation, rather than to the channel block designation itself. Specifically, the instructions state that, for filings in the air-ground radiotelephone service (commercial aviation), the answer to item A3 should be "C" followed by a number between 1 and 29. This information referenced in the instruction is not useful to the Commission in analyzing applications by air-ground licensees because, in each channel block, a licensee always will use all 29 channels in that particular block. However, there are 10 ***different*** channel blocks that may be specified by an air-ground licensee. It thus is more relevant to require applicants to disclose the specific channel block in Schedule A, item A3. Therefore, Claircom requests that the instructions be amended to specify that an air-ground applicant designate a channel block number between 1 and 10.

In addition, the numbers of the items in Schedule F do not coincide with the numbers of the relevant items referenced in the instructions to Schedule F on the FCC Form 600. Thus, for example, the instruction for item F1 refers to identifying the antenna as new or existing, whereas the information on whether the antenna is new or existing is required by item F2, rather than item F1, on the FCC Form 600. Similar numbering problems exist with respect to the other items on Schedule F referred to in the instructions. Thus, the Commission should amend the instructions to FCC Form 600, Schedule F to correspond to the actual items on Schedule F.

B. Section 22.929(b) Needs To Be Conformed with the Information Requirements Set Forth in the Form 600

In its recent report and order in CC Docket No. 92-115,[6] the Commission adopted new Section 22.929(b), which provides:

> The following information is required by FCC Form 401, Schedule C.
>
> (1) Location description; city; county; state; geographical coordinates correct to ± 1 second, the datum used (NAD 27 or NAD 83), *site elevation above mean sea level, proximity to adjacent market boundaries and international borders*;
>
> (2) *Antenna manufacturer, model number and type*, antenna height to tip above ground level, the height of the center of radiation of the antenna above the average terrain, the height of the antenna center of radiation above the average elevation of the terrain along each of the 8

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[6] In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, FCC 94-201 (Sept. 9, 1994) ("*Part 22 Rewrite Order*"). The rules adopted in that order become effective January 1, 1995.

> cardinal radials, *antenna gain in the maximum lobe, the beamwidth of the maximum lobe of the antenna*, a polar plot of the horizontal gain pattern of the antenna, *the electric field polarization of the wave emitted by the antenna when installed as proposed*; . . . .[7]

None of the italicized items appears on Exhibit C to the Form 600.[8] Section 22.929(b) accordingly should be revised to conform its provisions with the items actually contained on the Form 600. Otherwise, applicants may provide information in a separate exhibit that in fact is not required by the Commission. This is an unnecessary burden for both the Commission and applicants.

III. THE COMMISSION IMPROPERLY CHANGED THE FILING PROCEDURES FOR CELLULAR UNSERVED AREA PHASE II APPLICATIONS FROM FIRST-COME, FIRST-SERVED TO A 30-DAY NOTICE AND CUT-OFF

The *CMRS Third Report and Order* adopted 30-day notice and cut-off procedures for all CMRS applications governed by Part 22, excepted for cellular unserved area Phase I applications.[9] This included a decision "to change cellular unserved area Phase II applications from first-come, first-served procedures to a 30-day notice and cut-off," with the purpose being to "allow all unserved area licensing to be

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[7] New Section 22.929(b)(1), (2), *Part 22 Rewrite Order*, B-78 (emphasis added).

[8] Although new Section 22.929(b) references FCC Form 401, there is no Schedule C for that form. It is apparent that, in the *Part 22 Rewrite Order*, the Commission was contemplating use of the Form 600 adopted in this proceeding.

[9] *CMRS Third Report and Order*, ¶ 332.

conducted on a level competitive field even though the specific mechanism used for each phase is different."[10]

McCaw believes that the Commission's balancing of competing interests failed to take into account the Commission's own prior decisions adopting the first-come, first-served application procedures. As McCaw pointed out in its comments in response to the *Further Notice of Proposed Rulemaking* in this docket,[11] the Commission previously had adopted the existing application processing procedure for cellular Phase II unserved area applications in part so as not to "create an artificial incentive for parties to file applications for unserved areas."[12] The Commission simply dismisses the concerns of McCaw and others about the effect of the filing of speculative applications (a very legitimate concern in light of past experience in the cellular service) and the resulting delays in service to the public with the bare statement that "the benefits to be gained by using a 30-day notice and cut-off for Phase II outweigh this concern."[13] This conclusion in fact fails to take into account the

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[10] *Id.*, ¶ 333.

[11] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 2863 (1994) (Further Notice of Proposed Rulemaking).

[12] Comments of McCaw Cellular Communications, Inc., CC Docket No. 93-252, at 35 (filed June 20, 1994), quoting Amendment of Part 22 of the Commission's Rules To Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service, 6 FCC Rcd 6185, 6196-97 (1991) (First Report and Order and Memorandum Opinion and Order on Reconsideration).

[13] *CMRS Third Report and Order, ¶ 333.*

seriousness of the problems troubling McCaw and other commenters in this docket, while giving undue credence to the alleged (but unexplained) benefits of the new processing procedures.

McCaw believes that the Commission ultimately will find that adoption of a 30-day notice and cut-off procedure for cellular unserved area Phase II applications will impair the ability of cellular carriers to respond effectively to customer need and demand, without any compensating benefit to the public interest. Accordingly, McCaw urges the Commission to reconsider its action, and restore the first-come, first-served licensing procedure for such applications.

IV. THE COMMISSION FAILED TO CONFORM THE ANTENNA HEIGHT AND TRANSMITTER RULES FOR CELLULAR, ESMR, AND PCS TO ENSURE REGULATORY PARITY AMONG THESE COMPETING PROVIDERS OF SERVICE

Although the Commission generally sought to promote parity across various services that make up CMRS, it declined to do so with respect to the standards for maximum power limits for cellular, specialized mobile radio ("SMR"), and PCS. As a result, cellular carriers are permitted to operate at a maximum ERP of 500 Watts, while ESMR carriers are allowed 1000 Watts ERP at 305 meters and PCS licensees are limited to 1640 Watts with an antenna height up to 300 meters. The Commission

concluded that, as between cellular and ESMR, these limits had not placed cellular at a competitive disadvantage to SMR.[14] The Commission further stated:

> In order to maximize the potential for frequency reuse, cellular systems rely on large numbers of closely spaced stations typically operating at power levels well below the upper limits prescribed by our current rules. Moreover, to the extent that SMR licensees are seeking to provide cellular-equivalent service, their systems rely on similar low power technology. Thus, raising cellular power limits is not necessary to enhance the technical efficiency or competitive potential of cellular service.[15]

For those SMR systems employing frequency reuse as well as for PCS operations, the Commission's analysis concerning maximum power levels for cellular services is equally valid. All these services have incentives to operate at levels well below the maximum in order to enhance spectrum re-use and maximum service capacity. At the same time, the licensees in each respective service should have comparable opportunities to deploy higher power transmitters in those circumstances warranting such use.

The Commission's failure to conform the maximum power levels for competing services like cellular, ESMR, and PCS simply cannot be rationalized and must be reconsidered. Such action will serve the public interest by ensuring that different categories of CMRS operators have the same opportunities to design their systems as

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[14] *CMRS Third Report and Order*, ¶ 154.

[15] *Id.*

they see fit consistent with applicable design and other technical and operational requirements imposed by the Commission's Rules.

V. THE COMMISSION SHOULD EXEMPT LICENSEES IN THE AIR-GROUND RADIOTELEPHONE SERVICE FROM STATION IDENTIFICATION REQUIREMENTS

The *CMRS Third Report and Order* amends Section 22.313 to require licensees in the public mobile service to transmit station identification each hour within five minutes of the hour, or upon completion of the first transmission after the hour.[16] The rule in effect prior to the Commission's action in this proceeding and in its rewrite of Part 22 did not require stations in the 800 MHz air-ground service to identify the station.

The Commission currently exempts, and under the new rule will continue to exempt, general aviation ground stations in the air-ground service, stations in the cellular radiotelephone service, and certain rural subscriber stations from compliance with the station identification rule.[17] Claircom requests that the Commission expand the exceptions to the station identification requirement to exclude from compliance commercial aviation ground stations and airborne transmission units in the 800 MHz

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[16] The *Part 22 Rewrite Order* amended Section 22.313, effective January 1, 1995, to provide that the licensee of each station in the public mobile service must ensure that the transmissions of that station are identified at the end of each transmission or series of transmissions.

[17] *See CMRS Third Report and Order*, App. B at 17; *Part 22 Rewrite Order*, B-27.

air-ground radiotelephone service. The imposition of a station identification requirement on commercial aviation ground stations or airborne units in the 800 MHz air-ground service would be prohibitively expensive and technically inefficient. For example, since air-ground licensees share frequencies from one call to the next, the station identification could quickly become outmoded if licensees only identify each hour.

As an initial matter, all air-ground licensees share a fixed number of channels and use frequencies as they become available (*i.e.*, the air-ground network employs a "dynamic" changing frequency system where the air-ground licensees use channels as they are available; if none are available, the air-ground caller must wait until one becomes available). Imposing a station identification requirement needlessly ties up valuable frequency with the burden of having to announce the station's identification, thereby reducing trunking efficiencies, negatively impacting channel availability, and resulting in longer waiting times for airline passengers to make air-ground calls. Such a requirement thus impairs service to the public, especially high capacity areas where the three operational air-ground carriers are already vying for spectrum. Furthermore, station identifications in the air-ground service will not be identifiable under some of the modulation schemes likely to be used by air-ground service providers.

Moreover, the requirement to make a station identification every hour is equally inefficient. Presumably, such a requirement applies to all air-ground transmitters (including those used on pilot channels as well as voice channels), thereby necessitating

station identification even for transmitters not in use during a particular hour. Those transmitters will have to be turned on just to make the station identification. This is an inefficient use of the valuable air-ground spectrum.

Consequently, the Commission should broaden the existing exceptions to the station identification requirement to include air-ground commercial aviation ground stations and airborne units.

VI. CONCLUSION

The Commission has made remarkable strides within strict Congressional deadlines to establish regulatory parity across a range of CMRS offerings, in order to ensure that competitive is able to proceed freely, without hindrance from regulatory constraints. McCaw believes, however, that these steps can be further enhanced by incorporating the revisions suggested above. Such action should promote competition consistent with the Commission goal and thus serve the interests of customers.

Respectfully submitted,

MCCAW CELLULAR COMMUNICATIONS, INC.

By: Cathleen A. Massey

Cathleen A. Massey
Senior Regulatory Counsel
McCaw Cellular Communications, Inc.
1150 Connecticut Ave., N.W.
4th Floor
Washington, D.C. 20032
(202) 223-9222

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